

COPY

BILL LOCKYER
Attorney General of the State of California
TOM GREENE
Chief Assistant Attorney General
THEODORA BERGER
Senior Assistant Attorney General
DON ROBINSON
Supervising Deputy Attorney General
JAMES R. POTTER, State Bar No. 166992
Deputy Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2637
Fax: (213) 897-2802

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Los Angeles Superior Court

MAR 16 2006

John A. Clarke, Executive Officer/Clerk
By _____, Deputy
D. GILES

Attorneys for Plaintiff PEOPLE OF THE STATE OF
CALIFORNIA, ex rel. Maureen Gorsen, Director,
California Department of Toxic Substances Control

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL BRANCH

BC349076

PEOPLE OF THE STATE OF
CALIFORNIA, ex rel. Maureen Gorsen,
Director, California Department of Toxic
Substances Control,

Plaintiff,

v.

Trident Plating, a California Corporation,
and Does 1 to 10,

Defendant.

CASE NO.

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

(Calif. Health and Safety Code sections
25181, 25184, 25189 and 25189.2)

The People of the State of California, ex rel. Maureen Gorsen, Director of the
Department of Toxic Substances Control ("the Department"), alleges the following.

Statement of the Case

1. Defendant Trident Plating Inc. ("Trident") operates an electroplating facility (the
"Facility") at 10046 Romandel Avenue, Santa Fe Springs, California. Trident has operated at

1 this location since 2001. Trident's prior location, in Commerce, California, was destroyed by
2 fire. In its Santa Fe Springs operations, Trident generates spent hazardous, corrosive plating
3 solutions, rinse waters, and sludges that include dissolved metals. Trident also generates
4 extremely hazardous, potentially reactive wastes containing cyanide.

5 2. While managing these hazardous and extremely hazardous wastes, Trident has
6 violated and continues to violate the California Hazardous Waste Control Law, Chapter 6.5 of
7 Division 20 of the California Health and Safety Code, sections 25100 *et seq.* ("HWCL") by
8 handling hazardous waste in an unsafe manner.

9 3. DTSC hereby seeks civil penalties from and injunctive relief against Defendants for
10 their past and on-going violations of the HWCL and its implementing regulations.

11 PLAINTIFF

12 4. The Department is a public agency of the State of California organized and existing
13 under and pursuant to Health and Safety Code section 58000 *et seq.*

14 5. Maureen Gorsen is the Director of the Department.

15 6. Pursuant to sections 25181 and 25182 of the Health and Safety Code, the Attorney
16 General of the State of California is authorized, at the request of the Department, to commence
17 an action in the name of the People for civil penalties and injunctive relief under the HWCL. The
18 Department has asked the Attorney General to apply to this Court for an injunction enjoining
19 Defendants from continuing violations of the HWCL.

20 DEFENDANTS

21 7. Trident is an electroplating job shop. It operates various electroplating processes that
22 generate hazardous wastes, including corrosive (i.e., alkaline and acidic) wastes (Cal. Code
23 Regs., tit. 22, § 66261.22), wastes containing dissolved metals, and extremely hazardous and
24 potentially reactive wastes that contain cyanide (Cal. Code Regs., tit. 22, § 66261.23). Trident
25 treats some hazardous wastes on-site.

26 8. Trident is a California corporation, a "person," as defined at Health and Safety Code
27 section 25118. Further, Trident is an "owner" and/or "operator," as defined at California Code
28 of Regulations, title 22, section 66260.10.

1 9. When reference is made in this complaint to any act of Trident, such allegation shall
2 mean that each defendant did such acts or that employees or representatives of Trident did or
3 authorized such acts or recklessly failed to adequately or properly supervise, control or direct
4 Trident employees or representatives while engaged in the management, direction, operation or
5 control of the affairs of Trident and did so while acting within the course and scope of their
6 employment or agency.

7 10. Defendants Does 2-10 are the officers, agents, employees, servants or others acting in
8 interest or concert with Trident. The Department is ignorant of the true names of defendants sued
9 herein as Does 2-10. When the names of these defendants have been ascertained, the Department
10 will seek leave to amend the complaint to substitute the true name of each Doe defendant in
11 place of the fictitious name.

12 JURISDICTION AND VENUE

13 11. This court has jurisdiction pursuant to Cal. Const. Art. 6, section 10. Venue is proper
14 under Health and Safety Code section 25183. The violations principally took place at Trident's
15 place of business in Santa Fe Springs, California.

16 STATUTORY AND REGULATORY BACKGROUND

17 12. The State of California has a comprehensive – “cradle to grave” – statutory and
18 regulatory framework for the generation, handling, treatment, transport, and disposal of
19 hazardous wastes. The HWCL's implementing regulations specify requirements for the tracking,
20 storage, treatment, and disposal of hazardous waste to protect the public from the risks posed by
21 improper management of hazardous wastes. (Cal. Code Regs, tit. 22, § 66260.1 et seq.)

22 13. The HWCL is the California analog of the federal Resource Conservation and
23 Recovery Act, 42 U.S.C. section 6901 et seq (“RCRA”). Pursuant to state and federal law, the
24 Department administers the HWCL in lieu of federal administration of RCRA in California. (*See*
25 *Health & Saf. Code § 25101(d); California: Final Authorization of Revisions to State Hazardous*
26 *Waste Management Program, 66 FR 49118 (September 26, 2001).*) Federal law prohibits
27 California from imposing “any requirements less stringent than those authorized under [RCRA].”
28 (42 U.S.C. § 6929.)

1 14. State law – the HWCL – has a more inclusive definition of hazardous waste than
2 does federal law. Hazardous wastes that are regulated under California law but not federal law
3 are known as “non-RCRA hazardous wastes.” (Health & Saf. Code § 25117.9.) Whereas
4 California regulation of RCRA hazardous wastes must be no less stringent than rules
5 promulgated by the United States Environmental Protection Agency, California’s rules regulating
6 the handling of non-RCRA hazardous wastes are in some instances less stringent than the
7 analogous rules regulating the handling of RCRA wastes.

8 15. The HWCL and RCRA, prescribe detailed operating and safety requirements for
9 facilities that treat, store, recycle, or dispose of hazardous wastes – known either as “TSD
10 facilities” or “hazardous waste management facilities.” (*See* Cal. Code Regs., tit. 22, § 66265.1 et
11 seq.) Companies that merely generate hazardous waste in the course of other operations and send
12 that waste offsite for management are not hazardous waste management facilities and are subject
13 to lesser requirements. (*See* Cal. Code Regs., tit. 22, § 66262.1 et seq.)

14 16. In 1992, California adopted a tiered permitting scheme for hazardous waste
15 management facilities. (The Wright-Polanco-Lempert Hazardous Waste Treatment Permit
16 Reform Act of 1992, Stats.1992, c. 1345 (A.B.1772).) For example, companies that receive
17 hazardous wastes from other generators are generally subject to more strict requirements than are
18 companies that treat only hazardous waste that they generate themselves. Similarly, companies
19 that treat, store, or dispose of highly dangerous hazardous wastes are generally subject to more
20 strict requirements than are companies that handle only minimally hazardous wastes.

21 17. The middle tier of California’s tiered permitting scheme for hazardous waste
22 management facilities is known as the permit-by-rule tier. (Cal. Code Regs, tit. 22, § 67450.1 et
23 seq.) It is available to hazardous waste generators who treat certain hazardous wastes by the
24 treatment processes specified in section 67450.11. To be deemed to have a permit by rule, the
25 generator must comply with the notification requirements and other requirements of California
26 Code of Regulations, title 22, section 67450.1 et seq.

27 18. Under current law, the onsite treatment of cyanide-containing hazardous waste is
28 not eligible for permit by rule. However the Department is preparing regulations that would

1 make certain cyanide treatment operations eligible for permit by rule and has held public
2 workshops to discuss the scope of those regulations.

3 ENFORCEMENT AUTHORITY UNDER THE HWCL

4 19. The HWCL authorizes the Court to issue civil penalties under two distinct and
5 alternative provisions. Section 25189 of the Health and Safety Code creates liability for any
6 negligent or intentional violation of the HWCL. Section 25189.2 is a strict liability provision,
7 which creates liability for any violation of the HWCL. A person may not be held liable for
8 separate civil penalties imposed under sections 25189 and 25189.2 for the same act. (Health &
9 Saf. Code § 25189.2(d).)

10 20. Sections 25181 and 25184 of the Health and Safety Code authorize and direct the
11 court to enjoin any ongoing or potential violation of the HWCL.

12 21. Section 25181 of the Health and Safety Code authorizes the superior court to grant
13 "a permanent or temporary injunction, restraining order, or other order" when the Attorney
14 General, at the request of the Department, applies for an order enjoining violations of the HWCL
15 or of any rule or requirement issued thereunder, and the Department shows that the person
16 against whom the order is sought has violated or will violate those provisions,

17 22. Health and Safety Code section 25184 provides that in civil actions brought
18 pursuant to the HWCL in which an injunction or temporary restraining order is sought:

19 "it shall not be necessary to allege or prove at any stage of the proceeding that
20 irreparable damage will occur should the temporary restraining order, preliminary
21 injunction, or permanent injunction not be issued; or that the remedy at law is
22 inadequate, and the temporary restraining order, preliminary injunction, or permanent
23 injunction shall issue without such allegations and without such proof."

24 ENFORCEMENT HISTORY AT TRIDENT PLATING

25 23. On October 26, 2004, the Department conducted a regulatory inspection of Trident
26 Plating. At the conclusion of the inspection the Department issued a Summary of Violations. On
27 November 29, 2004, the Department issued a detailed Inspection Report.

28 24. On July 24, 2005, the Department and Trident executed a consent order, which

1 required Trident to remedy its violations of the HWCL on a set schedule ("Consent Order"). The
2 effective date of the Consent Order was July 18, 2005. A true and correct copy of the Consent
3 Order is attached to this Complaint as Exhibit 1. In the Consent Order, Trident admitted
4 violations that constitute Causes of Action 1 through 7 alleged herein.

5 25. In December of 2005, the Department determined that Trident still had not
6 complied with all of the provisions of the Consent Order.

7 FIRST CAUSE OF ACTION

8 (Failure to Conduct Tank Assessments as Required by
9 California Code of Regulations, title 22, section 66265.192)
(All Defendants)

10 26. Paragraphs 1 through 25 are realleged as if fully set forth herein.

11 27. California Code of Regulations, title 22, section 66265.192 requires hazardous
12 waste management facilities to obtain "a written assessment reviewed and certified by an
13 independent, qualified, professional engineer, registered in California in accordance with section
14 66270.11(d) attesting that the system has sufficient structural integrity, is acceptable for the
15 transferring, storing and treating of hazardous waste, and that the tanks and containment system
16 are suitably designed to achieve the requirements of this article. This assessment shall be
17 obtained prior to placing the tank system in service, and shall be kept on file at the facility."

18 28. Trident uses tanks to process aqueous, corrosive, and metal-containing hazardous
19 wastes and to process cyanide-containing wastes. All of the tanks used in those processes are
20 subject to the tank assessment requirements.

21 29. As of October 26, 2004, Trident did not have certified tank assessments for its
22 hazardous waste management tanks.

23 30. In 2001, Oscar Malkhoo, who presented Registered Engineer License Number
24 4744, prepared a document entitled "Tank and Containment Certification." This document
25 asserts that Mr. Malkhoo reviewed the installation of "the Fixed Treatment Unit (FTU)" at
26 Trident, but does not identify any individual tanks and does not contain the information about
27 individual tanks required by section 66265.192. The document's conclusory statements do not
28 constitute or demonstrate compliance.

1 31. On or about October 26, 2005 and December 7, 2005, Trident submitted revised
2 tank assessments. The revised tank assessments did not comply with the regulatory
3 requirements, in that, for example, they were missing information about the waste characteristics
4 of the wastes stored in the tanks. Further, Trident has not submitted a single comprehensive,
5 certified hazardous waste tank system assessment.

6 32. Defendants violated, and may continue to violate, California Code of Regulations,
7 title 22, section 66265.192 in that Trident has stored hazardous waste in tanks that do not have
8 tank assessments.

9 SECOND CAUSE OF ACTION

10 (Storage of Hazardous Waste Without the Authorization Required by
11 Health and Safety Code Section 25201)
12 (All Defendants)

13 33. Paragraphs 1 through 25 are realleged as if fully set forth herein.

14 34. Health and Safety Code section 25201(a) makes it illegal to store hazardous waste
15 without proper authorization.

16 35. “Storage” of hazardous waste includes any “holding” of hazardous waste. (Health
17 & Saf. Code, § 25123.3.) Generators of hazardous waste, however, may hold hazardous waste
18 for up to ninety days without being subject to TSD requirements. (Cal. Code Regs., tit. 22, §
19 66262.34.)

20 36. On October 26, 2004, a bag of hazardous waste filter cake was present at the
21 Trident facility. DTSC is informed and believes and thereon alleges that Trident had been
22 accumulating hazardous waste in the bag since June of 2002.

23 37. On October 26, 2004, two drums containing hazardous waste filters contaminated
24 with extremely hazardous, and potentially reactive, cyanide-containing hazardous wastes were
25 present at the Trident facility. DTSC is informed and believes and thereon alleges that Trident
26 had been accumulating the cyanide-contaminated filters since 2001.

27 38. Defendants violated, and may continue to violate, Health and Safety Code section
28 25201(a) in that Trident has stored hazardous waste without authorization.

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1 containment for pipes and other ancillary equipment, unless the piping is above ground piping
2 that is inspected for leaks on a daily basis.

3 47. On or about October 26, 2004, Trident Plating transported acidic wastes and
4 extremely hazardous, potentially reactive, cyanide-containing wastes in adjacent pipes that lacked
5 secondary containment, that were not separated by any other barrier and that were not inspected
6 daily for leaks. These pipes were exposed to routine foot traffic in the Trident facility and were
7 more susceptible to damage than metal pipes. The Department is informed and believes and
8 thereon alleges that Trident was not conducting daily inspections of the piping as required in lieu
9 of secondary containment.

10 48. Defendants violated, and may continue to violate, California Code of Regulations,
11 title 22, sections 66265.31 and 66265.193 in that Trident has transported incompatible
12 hazardous wastes in nearby above-ground pipes without any intervening secondary containment
13 and without conducting daily inspections of the piping as required in lieu of secondary
14 containment.

15 FIFTH CAUSE OF ACTION

16 (Failure to Inspect Hazardous Waste Tanks as Required by
17 California Code of Regulations, title 22, section 66265.195)
(All Defendants)

18 49. Paragraphs 1 through 25 are realleged as if fully set forth herein.

19 50. California Code of Regulations, title 22, section 66265.195 requires a hazardous
20 waste management facility to conduct daily inspections of tank systems that are used for
21 hazardous waste storage or treatment, document those inspections and maintain those documents
22 as part of the facility's operating record. (Cal. Code Regs., tit. 22, § 66265.73.) The inspection
23 must include specific items identified in the regulation.

24 51. On or about October 26, 2004, Trident did not have records demonstrating that it
25 had inspected its hazardous waste tanks in accordance with section 66265.195. DTSC is
26 informed and believes and thereon alleges that Trident did not adequately inspect its hazardous
27 waste management tanks.

28 52. Defendants violated, and may continue to violate, California Code of Regulations,

1 title 22, sections 66265.195 in that Trident had not properly inspected active hazardous waste
2 tanks.

3 SIXTH CAUSE OF ACTION

4 (Failure to Train Employees Handling Hazardous Waste as Required by
5 California Code of Regulations, title 22, section 66265.16)
(All Defendants)

6 53. Paragraphs 1 through 25 are realleged as if fully set forth herein.

7 54. California Code of Regulations, title 22, section 66265.16 requires that facility
8 personnel participate in hazardous waste training classes that include certain elements specified
9 in the regulation. Facility personnel must also receive annual updates of this training. Section
10 66260.10 defines facility personnel to mean all "persons who work, at, or oversee the operations
11 of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance"
12 with the HWCL regulations.

13 55. DTSC is informed and believes and thereon alleges that as of October 26, 2004.
14 Mr. Jesse Lopez and Mr. Juan Balevanada were facility personnel.

15 56. On or about October 26, 2004, Trident could not produce training records for
16 Mssrs. Lopez and Balevanada. DTSC is informed and believes and thereon alleges that these
17 gentlemen had not received the training required by section 66265.16.

18 57. On or about December 7, 2005, Trident submitted additional documentation
19 regarding its compliance with the training requirements. These documents did not demonstrate
20 that Trident had complied with California Code of Regulations, title 22, section 66265.16.

21 58. Defendants violated, and may continue to violate, California Code of Regulations,
22 title 22, section 66265.16, in that Trident has utilized facility personnel who had not received the
23 required training.

24 SEVENTH CAUSE OF ACTION

25 (Failure to Analyze Hazardous Waste as Required by
26 California Code of Regulations, title 22, sections 66265.13 and 67450.3)
(All Defendants)

27 59. Paragraphs 1 through 25 are realleged as if fully set forth herein.

28 60. California Code of Regulations, title 22, sections 67450.3(c)(9) and 66265.13,

1 require that a Permit-by-Rule facility analyze hazardous waste before treating it.

2 61. On or about October 26, 2004, Trident could not produce to DTSC a complete set
3 of analytical records for the cyanide-containing hazardous wastes that Trident was treating onsite.
4 The analytic records that Trident did present included inconsistencies and did not provide
5 information about each of the hazardous wastes generated by Trident.

6 62. On or about December 7, 2005, Trident submitted additional documentation
7 regarding its compliance with the waste analysis requirements. These documents did not
8 demonstrate that Trident had complied with California Code of Regulations, title 22, section
9 66265.13.

10 63. Defendants violated, and may continue to violate, California Code of Regulations,
11 title 22, section 66265.13, in that Trident has not had waste analysis records for all hazardous
12 waste it has treated.

13
14 EIGHTH CAUSE OF ACTION
15 (Failure to Complete Schedule for Compliance)
(All Defendants)

16 64. Paragraphs 1 through 63 are realleged as if fully set forth herein.

17 65. Health and Safety Code section 25188 provides that "Any person subject to a
18 schedule for compliance issued pursuant to Section 25187 who does not comply with that
19 schedule shall be subject to a civil penalty of not more than twenty-five thousand dollars
20 (\$25,000) for each day of noncompliance."

21 66. By its execution of the Consent Order, Respondent became subject to a Schedule
22 for Compliance that includes the following:

23 3. Respondent shall fully comply with the following schedule for
24 compliance. The times set forth below for the completion of various items
25 shall not be affected by the date of the signings of this Order and may only
be changed by a writing executed by the Department.

26 3.1.1. Respondent shall obtain a preliminary tank assessment and submit
27 the same to the Department not later than June 30, 2005. All work required
28 to be performed pursuant to such preliminary tank assessment shall be
completed not later than August 15, 2005, and certified as such to the
Department. A final tank assessment in full compliance with the
requirements of California Code of Regulations, title 22, section 66265.192,
shall be submitted to the Department not later than September 1, 2005. The

1 tank assessments shall address the complete tank systems including all pipes
2 that transport hazardous waste.

3 3.1.5. Respondent shall revise its inspection schedules and forms to
4 fully comply with the requirements of California Code of Regulations,
5 title 22, section 66265.195 and shall submit said schedules and forms
6 to the Department not later than June 30, 2005. At the same time,
7 Respondent shall submit the competed inspection forms for the week
8 of June 20, 2005.

9 3.1.6. Respondent shall prepare and submit to the Department the job
10 descriptions and training plan required pursuant to California Code of
11 Regulations, title 22, section 66265.16, not later than June 30, 2005. The
12 training plan shall require that the following employees of Respondent
13 attend California Compliance School: Ian Holmberg, Jesse Lopez, and
14 Rodriguez. Respondent shall complete all training necessary to bring all
15 employees current with said training plan not later than September 1, 2005.

16 3.1.7. Respondent shall submit to the Department a list of all tanks in its
17 facility that generate hazardous waste that is treated on site, together with a
18 description of the waste generated, not later than June 30, 2005. Pursuant to
19 California Code of Regulations, title 22, section 66265.13, the [Facility]
20 shall obtain a detailed chemical and physical analysis (hereafter referred to
21 as "analytical records") for a representative sample of each hazardous waste
22 that it treats onsite under Permit by Rule. Each waste that must be analyzed
23 shall be sampled for analysis at the point it is generated, and before it is
24 commingled with any other waste, and before it is treated in any way that
25 may alter its chemical, physical, or biological properties. Pursuant to section
26 25198 of the Health and Safety Code, all analytical procedures needed to
27 generate the required analytical records shall be performed by an analytical
28 laboratory that has been certified to analyze hazardous wastes by the State
of California. The laboratory shall use the recognized analytical procedures
for analyzing hazardous wastes as described in the U.S. Environmental
Protection Agency's publication SW-846, or equivalent established
analytical procedures. The analytical records shall show all hazardous
characteristics for each representative sample of hazardous waste, including,
but not be limited to, a determination of pH, the concentration of metals,
and the concentration of cyanide in each hazardous waste that was sampled
for analysis.

67. Defendant Trident Plating did not timely comply with items 3.1.1, 3.1.5., 3.1.6.
and 3.1.7. in the Consent Order. Further, the Department is informed and believes and thereon
alleges that Trident Plating has not yet complied with items 3.1.1. and 3.1.7.

68. Defendants violated, and may continue to violate, California Health and Safety
Code section 25188 in that Trident Plating did not timely comply with the Schedule of
Compliance in the Consent Order.

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1 REQUEST FOR RELIEF

2 The Department requests that the Court grant the relief that follows:

- 3 1. Enter judgment that Trident and Does 1-10 have violated the HWCL as described
4 in the First through Eighth Causes of Action;
- 5 2. Enter judgment that Trident and Does 1-10 are liable for civil penalties for those
6 violations as authorized by Health and Safety Code section 25189 or, in the alternative, by Health
7 and Safety Code section 25189.2, according to proof;
- 8 3. Enter temporary restraining orders, preliminary injunctions, permanent injunctions,
9 or other orders requiring Trident and Does 1-10 to comply with the applicable permits, the
10 HWCL and/or the regulations adopted thereunder;
- 11 4. Grant the Department its costs of suit herein; and
- 12 5. Grant such other and further relief as the court deems just and proper.
- 13

14 Date: March 14, 2006

15 Respectfully submitted,

16 BILL LOCKYER
17 Attorney General of the State of California

18 TOM GREENE
19 Chief Assistant Attorney General

20 THEODORA BERGER
21 Senior Assistant Attorney General

22 DON ROBINSON
23 Supervising Deputy Attorney General

24 Original signed by James R. Potter

25 JAMES R. POTTER
26 Deputy Attorney General
27 Attorneys for Plaintiff

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